prosecution, and that accordingly the fact that *Pai Kow* is a game of chance and that it was being played for money or money's worth must be affirmatively proved, as also the fact that accused was the owner or occupier of No. 12 and was using it as a common gaming house.

It is difficult to see under what authority the police entered these premises at all. No warrant under the Gaming Enactment was put in evidence nor was evidence led that the Inspector who raided the place was a Senior Police Officer acting under section 16 (1) of the said Enactment. The evidence is that the game was being played in the back portion of a shop which was not a public place, and there is no evidence to show that a search warrant under the Criminal Procedure Code had been issued or that the provisions of section 16 (1) and (2) thereof applied.

Be that as it may, the issue before the Court was whether the owner or occupier of the place entered was using it as a common gaming house, and whether without the aid of presumptions under the Common Gaming Houses Enactment the prosecution had proved its case sufficiently to justify calling on the accused to rebut it.

The evidence for the prosecution is that of Court Inspector Ali who not only conducted the raid but also the prosecution. In this connection I must point out that it is not usual that an officer actually taking part in the investigation of an offence and the arrest of the accused should conduct the prosecution of that accused. His evidence as to ownership or occupation of the premises by accused is simply a flat statement that accused was proprietor of the premises. There was no cross-examination by the accused. His evidence also is that he found in the premises 7 or 8 Chinese playing a domino game called *Pai Kow*, that some put money in their pockets and that there were chips on the table and on person of accused and also cups and dice. The inference drawn by the prosecution from this is that the game had some connection with the money, chips and dice and that the game was being played for money or money's worth.

If the game being played amounted to gaming, it is clear from the definition of the word "place" in the Common Gaming Houses Enactment that the room in No. 12 was being used for gaming and that the room was being used as a common gaming house.

There is no evidence that the game of *Pai Kow* is a game of chance or mixed chance and skill, even if the inference drawn from the exhibits found is that it was being played for money or money's worth.

The other witness for the prosecution, Goh Ah Soon, who was taking part in the game, appears to be an accomplice. He would appear to come under the 3rd category of those in section 4 (i) (a) who use a place for gaming and his evidence requires corroboration. His evidence is that accused was proprietor of the shop but he gives no reason for this statement. He states that gambling was taking place but this statement was not corroborated by the evidence of the Inspector.

That completes the evidence of the prosecution. It is clear that ownership of the premises by accused is not affirmatively proved, and that the essential element of gaming in regard to the game played by those arrested there has also not been proved. Further there is the admission of vital hearsay evidence in regard to the nature of the proceedings in the house, which must have affected the mind of the Magistrate in his apprehension of the case, even though, as far as possible, he tried to ignore it.

The prosecution had not made out a case which if unrebutted would warrant a conviction and accused had the right to be discharged at that stage of the proceedings without being called on to make his defence.

I would call the attention of the police authorities to the fact that gaming is a highly technical and artificial offence and that to ensure a conviction it is necessary that the provisions of the Enactment be rigidly and meticulously followed out, in order that the presumptions laid down for the help of the police in prosecuting offenders may arise.

The appeal must be allowed and the conviction and sentence set aside, and the fine paid refunded.

Appeal Allowed.

LIEW SANG v. PUBLIC PROSECUTOR.

[C.A. (Pretheroe, Ag. C.J., Federation of Malaya, Murray-Aynsley, C.J., Singapore and Bostock Hill, J.) March 8, 1948]

[Fed. — Cr. App. No. 11 of 1948]

Criminal Procedure Code, s. 191 — Right of accused to decide whether or not he will be a witness in the case.

An accused person has the right to decide whether or not he will be a witness in the case, and consequently, unless he so elects, he cannot be compelled to give evidence by, or on behalf of, anyone. If a co-accused desires to call him, he must be warned that he need not give evidence unless he wishes and that, if he does so, he will be liable to be cross-examined by the prosecution..

COURT OF APPEAL.

G. H. Conaghan for the Appellant.

C. V. Boyle (D. P. P.) for the Respondent.

The Judgment of the Court was delivered by :—

Pretheroe, Ag. C. J. : —At the trial of this case there were two accused, viz: Lee Swee Sin and Liew Sang. They were both charged firstly with committing gang-robbery with murder contrary to section 396 of the Penal Code, and secondly with abduction with intent secretly and wrongfully to confine a person, contrary to section 365 of the Penal Code. Mr. G. H. Conaghan appeared for both accused and the learned Judge was assisted by assessors.

At the end of the case for the prosecution the learned Judge advised both accused of their rights, and the first accused elected to give evidence. He also called one witness who gave evidence on his behalf. The second accused elected to say nothing.

The next entry in the record shows that "Mr. Conaghan calls him" (i.e. second accused) "as a witness". Now, section 191 of the Criminal Procedure provides as follows :—

> "The accused or his advocate may then open his case, stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and after their cross-examination, and re-examination (if any) may sum up his case.
>
> Provided always that if any accused person elects to be called as a witness, his evidence shall be taken before that of other witnesses for the defence.
>
> Provided also that any accused person, who elects to be called as a witness, may be cross-examined on behalf of any other accused person".

The first proviso to this section makes it abundantly clear that an accused person has the right to decide whether or not he will be a witness in the case, and consequently, unless he so elects, he cannot be "called" as a witness by, or on behalf of, anyone. Although he had elected to say nothing there is nothing in the record to indicate that he was warned that if he gave evidence on behalf of the first accused, he was liable to be cross-examined generally as to his own participation in the crime, and both Mr. Conaghan and counsel for the respondent (who were the counsel at the trial) assured the Court that no such warning was in fact given. In the event his evidence, if believed, completely exonerated the first accused, but his answer to the first question in cross-examination was "I took part in the ambush with ten others". It need scarcely be added that this answer was prejudicial to the second accused to the highest degree, and at the end of the trial, the first accused was acquitted on both counts, but second accused was found guilty on both counts. In our opinion, as the second accused had validly exercised his right neither to give evidence nor make a statement, it was not open to counsel to call him as a witness for first accused. We therefore quashed the conviction of second accused and ordered that he be re-tried.

Re-Trial Ordered.

LEONG SIEW MUN vs. K. SOCKALINGA MUDALIAR.

[Ipoh — Civil Application No. 3 of 1946 (Evans, J.) October 24, 1946]

Landlord and Tenant — Whether tenant has right to apply to Rent Board for permission to eject sub-tenant — Meaning of words "landlord" and "tenant" — Rent and Charged Land (Restriction) Enactment.

The question in this case was whether a tenant has the right to apply to the Rent Board for permission to eject his sub-tenant. The applicant was holding under a lease and it was argued that he was a tenant and was as such expressly excluded from the definition of landlord.

Held, that the tenant had the right to apply to the Rent Board for permission to eject his subtenant.

Case referred to :—

(1) *Logan v. Fair* (1922) S.C. 76.

CIVIL APPLICATION.

Yeoh Cheang Lee for the Applicant.

K. Macduff for the Respondent.

Evans, J. : —The parties to this reference filed statements of their cases and to-day appeared before me in support of them. Mr. Cheang Lee for the applicant before the Board stated that they had nothing to add to the statements put in but drew attention to the case of *Logan v. Fair*[1] where it was held that one who was a farmer holding of his wife and who demised to a third party, was the landlord in respect of that letting under the wording of the Scottish Act then applicable which is in the same terms as the definition of landlord in the Rent and Charged Land (Restriction) Enactment 1940.